

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

IN RE: )  
 )  
Kentuckiana Medical Center, LLC ) CASE NO. 10-93039-BHL-11  
 )  
 )  
Debtor. )

**MOTION TO DISMISS CASE**

Nancy J. Gargula, United States Trustee, by Trial Attorney Laura A. DuVall, moves this Court to dismiss this case and in support thereof states:

1. Kentuckiana Medical Center, LLC (the “Debtor” or “KMC”) commenced this case as a voluntary Chapter 11 on September 19, 2010.
2. Per the petition that the Debtor filed, the Debtor is not a “small business” as defined in 11 U.S.C. § 101(51D).

**Failure to Pay Fees to the United States Trustee**

3. Pursuant to 28 U.S.C. § 1930(a)(6), a debtor is required to pay a quarterly fee to the United States Trustee “until the case is converted or dismissed, whichever occurs first”.
4. Upon information and belief, the Debtor has an obligation for 11 U.S.C. § 1930(a)(6) quarterly fees for the First (1<sup>st</sup>) Quarter of 2011 in the amount of \$13,000. Those fees were due on or before April 30, 2011. As of the date of this motion, the outstanding fees owed have not been paid.
5. Pursuant to 11 U.S.C. § 1112(b)(4)(K), failure to pay any fees or charges required under chapter 123 of title 28 constitutes “cause” for dismissal or conversion.
6. The Debtor’s failure to timely pay fees owed to the United States Trustee constitutes

cause for dismissal of the case.

**No Reasonable Likelihood of Reorganization**

7. Pursuant to 11 U.S.C. § 1112(b)(4)(A) the “substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation” constitutes “cause” for dismissal or conversion.

8. Debtor, since the date of filing, has continued to lose money. The Debtor’s operating reports from the date of filing until March 31, 2011, indicate an operating loss of \$5,397,188. Further, the Debtor has maintained that it is unable to operate profitably without an infusion of money to “fund the completion of the Hospital facilities” and continue to operate. See Debtor’s Motion for Entry of an Order, Docket # 472 (“Motion to Incur Debt”).

9. This continued operating loss constitutes a substantial or continuing loss to or diminution of the estate.

10. Although the Debtor has indicated that it is attempting to locate financing, the Debtor’s estate exemplifies an “absence of a reasonable likelihood of rehabilitation.”

11. The Debtor has done nothing other than tell the Court and the parties what it wants to reorganize but has never provided specifics about what is necessary to accomplish its proposed reorganization. For example, the Debtor desires to obtain a capital infusion to complete the hospital facility, but Debtor has never advised the Court how much said completion would cost, how long the completion would take, and how Debtor would be able to continue operations during the build out.

12. The Debtor’s Motion to Incur Debt is a further attempt to delay what by all accounts seems to be the inevitable closure or sale of this facility. The Debtor has in the past indicated

that a significant amount of money would be needed for the hospital to build out the emergency room and remaining rooms.

13. The post-petition funding proposed by the letter of intent attached to the Motion to Incur Debt is just that a possible proposal that is being explored by the proposed lender. The Debtor is paying the proposed lender a fee to determine if financing will be approved. If post-petition funding is approved, the Debtor still has not explained how it would propose a plan of reorganization that would successfully reorganize the Debtor and allow for a dividend to unsecured creditors.

14. Given the continuing and significant diminution to the estate and the absence of a reasonable likelihood of rehabilitation, the United States Trustee believes that this case should be dismissed.

15. The United States Trustee acknowledges that Med One Capital Funding, LLC (“Med One”) and the Official Committee of Unsecured Creditors (“Committee”) have both filed motions to convert this case to Chapter 7. Docket #466 and #470. While the United States Trustee has considered those Motions, she believes that the basis for relief is not well supported. Neither moving party has clearly asserted what assets could possibly be liquidated to benefit unsecured creditors. It appears all assets in this case are fully encumbered and neither moving party has requested permission from the court to pursue any potential chapter 5 claims on behalf of the Debtor. Further, the United States Trustee believes that converting this case to a Chapter 7 would be unduly burdensome on a Chapter 7 Trustee. First, there would likely be limited or no funds available for a Chapter 7 Trustee to perform various duties that may be required. Further, a Chapter 7 Trustee would have significant statutory requirements in handling the Debtor’s patient

records. See 11 U.S.C. §351. Accordingly, the United States Trustee does not believe it would be in the best interests of all creditors to convert this case to Chapter 7.

**WHEREFORE**, the United States Trustee requests the Court grant this Motion to Dismiss and such other relief as is just and proper.

Respectfully submitted,

NANCY J. GARGULA  
United States Trustee

By: /s/ Laura A. DuVall  
Laura A. DuVall  
Trial Attorney  
Office of the United States Trustee  
101 West Ohio St., Suite 1000  
Indianapolis, IN 46204  
T: 317-226-6101  
F: 317-226-6356  
[laura.duvall@usdoj.gov](mailto:laura.duvall@usdoj.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that on May 9, 2011, a copy of the foregoing **MOTION TO DISMISS CASE** filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

Christy J. Adams [christya@bornopp.com](mailto:christya@bornopp.com)  
Vincent Frank Alexander [VFA@kttl.com](mailto:VFA@kttl.com), [lf@kttl.com](mailto:lf@kttl.com)  
Elizabeth Alphin [loubknotices@mapother-atty.com](mailto:loubknotices@mapother-atty.com)  
Neil C. Bordy [bordy@derbycitylaw.com](mailto:bordy@derbycitylaw.com), [belliott@derbycitylaw.com](mailto:belliott@derbycitylaw.com);  
[yeager@derbycitylaw.com](mailto:yeager@derbycitylaw.com); [neukomm@derbycitylaw.com](mailto:neukomm@derbycitylaw.com); [mcghee@derbycitylaw.com](mailto:mcghee@derbycitylaw.com);  
[cebe@derbycitylaw.com](mailto:cebe@derbycitylaw.com)  
C. R. Bowles [crb@gdm.com](mailto:crb@gdm.com), [shm@gdm.com](mailto:shm@gdm.com)  
John P Brice [lexbankruptcy@wyattfirm.com](mailto:lexbankruptcy@wyattfirm.com)  
Kayla D. Britton [kayla.britton@bakerd.com](mailto:kayla.britton@bakerd.com), [patricia.moffit@bakerd.com](mailto:patricia.moffit@bakerd.com)  
Michael V. Brodarick [mbrodarick@lloydmc.com](mailto:mbrodarick@lloydmc.com)  
David M. Cantor [cantor@derbycitylaw.com](mailto:cantor@derbycitylaw.com), [belliott@derbycitylaw.com](mailto:belliott@derbycitylaw.com);  
[bates@derbycitylaw.com](mailto:bates@derbycitylaw.com); [neukomm@derbycitylaw.com](mailto:neukomm@derbycitylaw.com); [cebe@derbycitylaw.com](mailto:cebe@derbycitylaw.com);  
[yeager@derbycitylaw.com](mailto:yeager@derbycitylaw.com); [mcghee@derbycitylaw.com](mailto:mcghee@derbycitylaw.com)  
Courtney Elaine Chilcote [cchilcote@hklawfirm.com](mailto:cchilcote@hklawfirm.com), [swatson@hklawfirm.com](mailto:swatson@hklawfirm.com)  
Darrell William Clark [dclark@stinson.com](mailto:dclark@stinson.com), [cscott@stinson.com](mailto:cscott@stinson.com)  
Rachele L. Cummins [rachele@smithcarpenterlaw.com](mailto:rachele@smithcarpenterlaw.com)  
Danielle J Cunningham [danielle.cunningham@btlaw.com](mailto:danielle.cunningham@btlaw.com)  
Robert William DeWees [rdewees@mcclaindeweess.com](mailto:rdewees@mcclaindeweess.com)  
Laura A DuVall [Laura.Duvall@usdoj.gov](mailto:Laura.Duvall@usdoj.gov)  
Jeffrey M. Heller [jeffrey.heller@klgates.com](mailto:jeffrey.heller@klgates.com), [teresa.gomez@klgates.com](mailto:teresa.gomez@klgates.com)  
Michael D. Hicks [mhicks@mhba.com](mailto:mhicks@mhba.com)  
Michael W. Hile [mhile@katzkorin.com](mailto:mhile@katzkorin.com), [dyoung@katzkorin.com](mailto:dyoung@katzkorin.com)  
Jeffrey A. Hokanson [jhokanson@hklawfirm.com](mailto:jhokanson@hklawfirm.com), [jwellner@hklawfirm.com](mailto:jwellner@hklawfirm.com)  
Jay Jaffe [jay.jaffe@bakerd.com](mailto:jay.jaffe@bakerd.com), [tracy.whitman@bakerd.com](mailto:tracy.whitman@bakerd.com); [sarah.herendeen@bakerd.com](mailto:sarah.herendeen@bakerd.com)  
Michael R Johnson [mjohnson@rqn.com](mailto:mjohnson@rqn.com), [sglendenning@rqn.com](mailto:sglendenning@rqn.com); [docket@rqn.com](mailto:docket@rqn.com)  
David Seth Kaplan [dkaplan@millerwells.com](mailto:dkaplan@millerwells.com), [chinkle@millerwells.com](mailto:chinkle@millerwells.com)  
David R. Langston [drl@mhba.com](mailto:drl@mhba.com), [memert@mhba.com](mailto:memert@mhba.com)  
Thomas William Lawless [tomlawless@comcast.net](mailto:tomlawless@comcast.net)  
Michael W. McClain [mike@kentuckytrial.com](mailto:mike@kentuckytrial.com); [laura@kentuckytrial.com](mailto:laura@kentuckytrial.com)  
Michael K. McCrory [mmccrory@btlaw.com](mailto:mmccrory@btlaw.com), [bankruptcyindy@btlaw.com](mailto:bankruptcyindy@btlaw.com)  
Carrie Elizabeth Mitchell [cmitchell@halperinlaw.net](mailto:cmitchell@halperinlaw.net), [dcohen@halperinlaw.net](mailto:dcohen@halperinlaw.net)  
James P Moloy [jmoloy@boselaw.com](mailto:jmoloy@boselaw.com), [dlingenfelter@boselaw.com](mailto:dlingenfelter@boselaw.com);  
[mwakefield@boselaw.com](mailto:mwakefield@boselaw.com)  
Whitney L Mosby [wmosby@binghammchale.com](mailto:wmosby@binghammchale.com), [mmccclain@binghammchale.com](mailto:mmccclain@binghammchale.com)  
Charity B Neukomm [neukomm@derbycitylaw.com](mailto:neukomm@derbycitylaw.com)  
Mark R. Owens [mowens@btlaw.com](mailto:mowens@btlaw.com), [mark.owens@btlaw.com](mailto:mark.owens@btlaw.com); [bankruptcyindy@btlaw.com](mailto:bankruptcyindy@btlaw.com)  
Emily L Pagorski [emily.pagorski@skofirm.com](mailto:emily.pagorski@skofirm.com); [emily.keith@skofirm.com](mailto:emily.keith@skofirm.com)  
Wendy W Ponader [wendy.ponader@bakerd.com](mailto:wendy.ponader@bakerd.com), [sarah.herendeen@bakerd.com](mailto:sarah.herendeen@bakerd.com)

Mark A. Robinson [mrobinson@vhlaw.com](mailto:mrobinson@vhlaw.com), [dalbers@vhlaw.com](mailto:dalbers@vhlaw.com)  
Herbert K. Ryder [hryder@daypitney.com](mailto:hryder@daypitney.com), [managingclerk@daypitney.com](mailto:managingclerk@daypitney.com)  
Bradley Scott Salyer [bss@morganandpottinger.com](mailto:bss@morganandpottinger.com),  
[louretailbankruptcy@morganandpottinger.com](mailto:louretailbankruptcy@morganandpottinger.com); [plouretbkr@gmail.com](mailto:plouretbkr@gmail.com)  
Mark J. Sandlin [msandlin@goldbergsimpson.com](mailto:msandlin@goldbergsimpson.com), [ekearfott@goldbergsimpson.com](mailto:ekearfott@goldbergsimpson.com)  
Thomas C Scherer [tscherer@binghamchale.com](mailto:tscherer@binghamchale.com), [mmcclain@binghamchale.com](mailto:mmcclain@binghamchale.com)  
Rodney Lee Scott [rscott@wthslaw.com](mailto:rscott@wthslaw.com)  
Ivana B. Shallcross [ibs@gdm.com](mailto:ibs@gdm.com)  
M. Andrew Stewart [astewart@mhba.com](mailto:astewart@mhba.com)  
Andrew D Stosberg [astosberg@lloydmc.com](mailto:astosberg@lloydmc.com), [bmarks@lloydmc.com](mailto:bmarks@lloydmc.com)  
Sabrina L Streusand [streusand@streusandlandon.com](mailto:streusand@streusandlandon.com), [bateman@streusandlandon.com](mailto:bateman@streusandlandon.com)  
U.S. Trustee [ustpregion10.in.ecf@usdoj.gov](mailto:ustpregion10.in.ecf@usdoj.gov)  
Tyler R. Yeager [yeager@derbycitylaw.com](mailto:yeager@derbycitylaw.com), [belliott@derbycitylaw.com](mailto:belliott@derbycitylaw.com);  
[cebe@derbycitylaw.com](mailto:cebe@derbycitylaw.com)  
Scott A. Zuber [szuber@daypitney.com](mailto:szuber@daypitney.com), [managingclerk@daypitney.com](mailto:managingclerk@daypitney.com)

I further certify that on May 9, 2011, a copy of the foregoing **MOTION TO DISMISS CASE** was mailed by first-class U.S. Mail, postage prepaid, and properly addressed to the following:

c/o Gregg S. Kleiner IDev Technologies, Inc.  
Cooley LLP  
101 California Street, 5th Floor  
San Francisco, CA 94111-5800

Kentuckiana Medical Center LLC  
4601 Medical Plaza Highway  
Clarksville, IN 47129

Robert Krist  
Endologix Inc.  
11 Studebaker  
Irvine, CA 92618

/s/ Laura A. DuVall  
Laura A. DuVall  
Trial Attorney  
Office of the United States Trustee  
101 West Ohio Street, Suite 1000  
Indianapolis, IN 46204  
P: 317-226-6101  
F: 317-226-6356  
[Laura.Duvall@usdoj.gov](mailto:Laura.Duvall@usdoj.gov)